

# EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

TAKEDA PHARMACEUTICAL )  
COMPANY LIMITED, TAKEDA )  
PHARMACEUTICALS NORTH )  
AMERICA, INC., TAKEDA ) Civil Action No.  
PHARMACEUTICALS LLC, TAKEDA ) 3:11-CV-02506-  
PHARMACEUTICALS AMERICA, ) JAP-DEA  
INC., and ETHYPHARM, S.A., )  
Plaintiffs, )  
vs. )  
MYLAN PHARMACEUTICALS, )  
INC., )  
Defendant. )  
\_\_\_\_\_ )

DEPOSITION OF DR. RUSSELL MUMPER  
New York, New York  
June 6, 2012

Reported By:  
CATHI IRISH, RPR, CLVS, CCR

<p style="text-align: right;">110</p> <p>1 MUMPER</p> <p>2 suspended, or an ODT that was meant to</p> <p>3 disintegrate in the mouth, that a slight</p> <p>4 increase in viscosity would have a positive</p> <p>5 attribute, like maybe a smoother, more</p> <p>6 pleasant sensation, or again, aid in the</p> <p>7 particles being suspended in the mouth just</p> <p>8 prior to swallowing. So I don't think that</p> <p>9 increasing viscosity for an ODT would always</p> <p>10 be a bad thing.</p> <p>11 BY MS. CHOW:</p> <p>12 Q. In rendering your opinion as to the</p> <p>13 purported indefiniteness of permits to obtain</p> <p>14 reduced influence of viscosity, did you take the</p> <p>15 prosecution history into account?</p> <p>16 A. Yes, I recall in the prosecution</p> <p>17 history that this claim term was included to</p> <p>18 differentiate the '632 claim from prior art that</p> <p>19 was similar or perhaps the same invention but that</p> <p>20 included an excipient that increased the</p> <p>21 viscosity.</p> <p>22 Q. Like guar gum, right?</p> <p>23 A. Off the top of my head, I can't recall</p> <p>24 specifically what excipient it was but I know it</p> <p>25 was a viscosity increasing excipient.</p>	<p style="text-align: right;">112</p> <p>1 MUMPER</p> <p>2 way to eliminate the prior art. The problem I</p> <p>3 have with that is that the prior art included</p> <p>4 an excipient that increased viscosity, and</p> <p>5 that prior art as I recall had a number of</p> <p>6 examples of a viscosity increasing agent, and</p> <p>7 as we discussed earlier, the examples aren't</p> <p>8 meant to embody the complete invention. So</p> <p>9 inherent in that prior art was the addition of</p> <p>10 the viscosity increasing agent so it could be</p> <p>11 at many different levels. So how does one</p> <p>12 know when practicing '632 if they would want</p> <p>13 to, as required, reduce influence of viscosity</p> <p>14 relative to the prior art? How much of that</p> <p>15 excipient or lack of excipient would be needed</p> <p>16 to have a reduced influence of viscosity?</p> <p>17 That is an indefinite term and one that</p> <p>18 scientifically would be very difficult to</p> <p>19 arrive at in my opinion.</p> <p>20 BY MS. CHOW:</p> <p>21 Q. Do you understand that if there's a</p> <p>22 claim term that you may not understand what it</p> <p>23 means when you just read the claim, that the</p> <p>24 prosecution history can shed light on the meaning</p> <p>25 of that claim? Do you understand that concept?</p>
<p style="text-align: right;">111</p> <p>1 MUMPER</p> <p>2 Q. Okay. What did you take from the fact</p> <p>3 that during prosecution the patentee was</p> <p>4 differentiating over prior art that included an</p> <p>5 excipient that increased viscosity, what did you</p> <p>6 take from that?</p> <p>7 A. What I took from that is that the '632</p> <p>8 patent with respect to that claim element needed</p> <p>9 to differentiate that specific claim or the claim</p> <p>10 would have not been novel and awarded because</p> <p>11 there was prior art that had already claimed every</p> <p>12 element of claim 1 except for that viscosity term.</p> <p>13 Q. So you understood that it was</p> <p>14 significant that the patentee had to include the</p> <p>15 phrase "permits to obtain reduced influence of</p> <p>16 viscosity" in order to overcome the prior art but</p> <p>17 you still concluded that the claim term was</p> <p>18 indefinite; is that right?</p> <p>19 MR. MUKERJEE: Objection as to</p> <p>20 characterization of the witness's testimony.</p> <p>21 You can answer.</p> <p>22 THE WITNESS: I still concluded that</p> <p>23 this claim term "reduced influence of</p> <p>24 viscosity" is indefinite. I recognize that</p> <p>25 the '632 claim was being constructed in such a</p>	<p style="text-align: right;">113</p> <p>1 MUMPER</p> <p>2 A. I believe I understand the concept that</p> <p>3 you're trying to portray or trying to relay to me.</p> <p>4 To me, that's probably analogous to teaching a</p> <p>5 sustained-release agent but the prosecution</p> <p>6 history reveals that it may be a cushioning agent,</p> <p>7 so I think you're trying to make that correlation.</p> <p>8 Q. Okay, well -- so when you rendered your</p> <p>9 opinions as set forth in your declaration, did the</p> <p>10 prosecution history influence any of your</p> <p>11 conclusions?</p> <p>12 A. Are you asking me with respect to this</p> <p>13 term reduced pH influence? I'm sorry, reduced</p> <p>14 influence of viscosity?</p> <p>15 Q. Sure, I'll take that to start.</p> <p>16 A. I think I just addressed that but let</p> <p>17 me restate.</p> <p>18 As I mentioned, I did look at the</p> <p>19 prosecution history and the prior art that</p> <p>20 included an agent that increased viscosity and</p> <p>21 looked at what that taught and what it was doing.</p> <p>22 I looked at the prosecution history. I understood</p> <p>23 that '632, claim 1 was trying to move around that</p> <p>24 prior art by having the term "reduced influence of</p> <p>25 viscosity."</p>

29 (Pages 110 to 113)